# PURCHASE AND SALE AGREEMENT

**by and between**

**THE UNITED STATES OF AMERICA ACTING BY AND THROUGH THE SECRETARY OF THE AIR FORCE**

**as Seller**

**and**

**AIR FORCE ENLISTED VILLAGE, INC**

**as Buyer**

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# PURCHASE AND SALES AGREEMENT

**THIS PURCHASE AND SALES AGREEMENT** (this "**Agreement**") is made to be effective as of _____, 2021 (the "**Effective Date**") by and between the **UNITED STATES OF AMERICA,** acting by and through the Secretary of the Air Force ("**Seller**"), and the **AIR FORCE ENLISTED VILLAGE, INC.,** a Florida not for profit corporation, (**"Buyer"**). The Seller and Buyer may be referred to jointly as the **"Parties"** or separately as a **"Party"**.

## RECITALS

A. Section 2846 of the National Defense Authorization Act for Fiscal Year 2019, Public Law No. 115-232, 132 Stat. 1636 (the **"Conveyance Authority"**), authorized the Seller to convey to the Buyer all right, title, and interest of the United States in and to a parcel of real property, including improvements, if any, thereon, consisting of approximately 80 acres (the **"Property"**) located adjacent to Eglin Air Force Base, Florida for the purpose of independent-living and assisted living units for veterans. In consideration for the conveyance, the Buyer is required to provide the Seller an amount equivalent to the fair market value based on an appraisal approved by the Seller, as set forth in Recital C below, which consideration may be by cash payment, in-kind consideration, or a combination thereof, at such time as the Seller may require.

B. The Conveyance Authority also authorized the Seller to require the Buyer to cover all costs, except for the costs for environmental remediation of the Property, or to reimburse the Seller for costs incurred by the Seller to carry out the conveyance.

C. The Buyer secured an appraisal of the Property that resulted in an estimate of five million dollars ($5,000,000.00) for the fair market value of the conveyance. The Buyer's appraisal met the minimum requirements in the Uniform Appraisal Standards for Federal Acquisitions (Yellow Book) and was approved by the Deputy Assistant Secretary of the Air Force for Installations as the fair market value of the Property.

D. The Buyer has advised the Seller of the need to conduct capital campaigns to secure financing for both the payment of consideration to the Seller for the purchase of the Property as required by the Conveyance Authority and the construction thereon of independent-living and assisted living units for veterans.

E. The Parties desire to memorialize in this Agreement all of the material terms associated with a conveyance of the Property by the Seller to the Buyer under the Conveyance Authority and to provide sufficient time to permit the Buyer to conduct its capital campaign.

**NOW, THEREFORE,** in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## ARTICLE I.
## AGREEMENT OF SALE AND PURCHASE.

**1.1. Sale and Purchase.** Seller agrees to sell and convey unto Buyer, and Buyer agrees to purchase and accept from Seller, at the price to be paid through the delivery of in-kind consideration to the Seller as described in Article II below and subject to the terms, covenants, conditions and provisions herein set forth, the Property consisting of all of the land described in **Exhibit A** and as depicted in **Exhibit B,** attached hereto and made a part hereof (the **"Land"**), and the improvements as described in **Exhibit C.**

## ARTICLE II.
## CONSIDERATION

**2.1. Purchase Price.** The purchase price to be paid by the Buyer to Seller for conveyance of the Property shall be five million dollars ($5,000,000.00), together with interest computed at an annual rate of three per cent (3%) from the Effective Date through the Closing Date (as such term is later defined) (the **"Purchase Price"**), which shall be payable to Seller, as in-kind consideration pursuant to the terms of the IKC Agreement (as such term is later defined) to be delivered to the Seller at the closing of the transaction contemplated hereby (the **"Closing"**).

**2.2. In-Kind Consideration.**

A. The Buyer shall have until October 1, 2024 (the **"Financing Date"**) to secure financing for the payment of in-kind consideration to the Seller for the purchase of the Property and funding for the award of an Architecture/Engineering contract to accomplish the full scope of Phase 2 development work as described in Article III below (the **"Initial Funding Requirements"**). The Buyer shall notify the Seller in writing when the Buyer has concluded its initial capital campaign to fund the Initial Funding Requirements and is prepared to enter into an agreement for the delivery of in-kind consideration to the Seller in an amount not less than the Purchase Price (the **"IKC Notice"**).

B. Not later than one hundred twenty (120) days from the date the Seller receives the IKC Notice, or such longer period as may be reasonably required by the Seller, the Buyer and the Seller shall enter into an agreement providing for the delivery from the Buyer to the Seller of any reasonably available commercial products, equipment, materiel or services as designated by the Seller in its reasonable discretion in a total amount of not less than the Purchase Price as in-kind consideration for the conveyance of the Property (the **"IKC Agreement"**); *provided, however*, that the in-kind consideration shall not consist of the alteration of existing facilities or construction of new facilities.

C. The IKC Agreement shall include, without limitation: (i) the designated items of in-kind consideration acceptable to the Seller, (ii) the itemized cost of each item of in-kind consideration, including the cost of transportation, as evidenced by catalog prices, vendor quotes, invoices or other forms of information reasonably acceptable to the Seller, and (iii) the stipulated date and place of delivery to the Seller of each item of in-kind consideration. The Buyer shall deliver the in-kind consideration to the Seller free and clear of any liens or security interests of any

nature.

D. Until acceptance by the Seller at the stipulated place(s) and time(s) of delivery as provided in the IKC Agreement, the risk of loss, damage, or destruction to any item of in-kind consideration shall remain with the Buyer. The Buyer shall, at the election of the Seller, repair or replace any lost, damaged or destroyed items of in-kind consideration. This Section 2.2.D. shall expressly survive the Closing and shall not merge with the provisions of any closing documents.

## ARTICLE III.
## PHASED DEVELOPMENT AND FINANCING

**3.1. Phased Development.** In order to achieve maximum use and benefit of the Property for Veterans as authorized by the Conveyance Authority, the Property shall be developed to provide the uses as authorized under Article VI of this Agreement in multiple phases over a number of years. This development approach will allow the Buyer to proceed with an orderly planned construction program that is flexible enough to respond to the housing and care needs of the future residents with the right mix of residential units and ancillary services to meet market demand. Further, the timing of phases will be planned to provide opportunities for the Buyer to acquire funding through both donated and borrowed funds to finance separate phases thus allowing ongoing completion of housing offerings to accelerate the availability for Veterans. The proposed phases and anticipated schedules are as follows:

Phase 1: Property acquisition to occur at Closing.
Phase 2: Completion of design development and processing application through Okaloosa County for Development Order and permits. Target start within fifteen (15) days of Closing. Completion target eighteen (18) months from Closing.
Phase 3: Initial construction including site work and infrastructure construction sufficient to support a minimum of forty (40) independent and/or assisted-living units. Target start twenty-four (24) months from Closing.
Phase 4: Construction of a minimum of twenty (20) initial independent and/or assisted-living units and associated structures (the "Initial Units"). Predicated on favorable market conditions, target start twenty-four (24) months from completion of Phase 3.

Future phases of construction will continue until the project is built out.

**3.2. Automatic Termination.** In the event the Buyer fails to secure financing to satisfy the Initial Funding Requirements by no later than the Financing Date, this Agreement shall automatically terminate without notice or any further action of the Parties and the Seller shall be released from all obligations under this Agreement.

## ARTICLE IV.
## SURVEY, TITLE, INSPECTIONS AND RIGHT OF TERMINATION

**4.1. Survey.** The Buyer has, at its sole cost and expense, caused to be prepared a survey of the Land showing the boundaries of the Land (the "**Survey**"), which has been approved by the Seller.

The legal description provided by the Survey has been incorporated into both **Exhibit A** and the form of the Quitclaim Deed (the, **"Deed"**) attached to this Agreement as **Exhibit D.**

**4.2. Title**. The Buyer shall obtain a title commitment for the Property (the **"Title Commitment"**) at its sole cost and expense prior to closing and will obtain an owner's title insurance policy after closing. The Buyer shall be responsible for reviewing the Title Commitment and waives any rights to compel the Seller to cure, or to seek damages or any other form of restitution from the Seller for defects, exceptions, or other uninsurable items as may be specified in the Title Commitment and title insurance policy.

**4.3. Environmental Baseline Survey.** The Buyer shall, at no cost to the Seller, complete an Environmental Baseline Survey (**"EBS"**) documenting the environmental conditions and matters on and affecting the Property prior to Closing. The EBS shall be accomplished by a qualified environmental contractor approved by the Seller in its reasonable discretion and include all documents and actions for both a Phase I and, if necessary, Phase II EBS in conformance with the requirements of DAFI 32-7020, *Environmental Restoration Program,* and subject to the Seller's review and approval before finalization.

**4.4. Right of Inspection**. The Buyer and its authorized agents and representatives shall, subsequent to the Effective Date and prior to Closing, have reasonable access to the Property at all reasonable times during normal business hours (or at such other times as Seller may approve) to inspect and conduct due diligence, investigations, testing, analysis, assessments, surveys, soil borings, geotechnical reviews and evaluations of the Property necessary to comply with Buyer's reasonable requirements (collectively the **"Environmental Testing"**). Buyer shall provide no less than two (2) business days' prior notice to Seller of its intention, or the intention of its agents or representatives, to enter onto the Property for the purpose of conducting any invasive or intrusive testing of the physical condition of the Property. Buyer shall bear the cost of all of such inspections, tests, investigations and analyses. At Seller's option, Seller and its authorized representatives may be present for any Environmental Testing. Seller shall have the right to approve any invasive or intrusive testing of the physical condition of the Property or the scope of any Environmental Testing, such approval not to be unreasonably withheld or delayed. Buyer agrees to provide Seller with a copy of any inspection report. The Buyer's obligation to deliver copies of inspection reports to the Seller shall survive any termination or expiration of this Agreement and the Closing.

**4.5. Inspection Obligations.**

A. In conducting any Environmental Testing subsequent to the Effective Date and prior to Closing, the Buyer and its agents and representatives shall: (i) not damage any part of the Property (except as a result of invasive and intrusive testing in accordance with Section 4.4 hereof and in connection with which Buyer restores the Property upon completion of such testing as closely as reasonably possible to its original condition); (ii) not injure or otherwise cause bodily harm to Seller or its agents, invitees, contractors or employees; and (iii) maintain commercial general liability (occurrence) insurance in the minimum amount of $1,000,00.00 per occurrence covering all claims for bodily injury, deaths of persons and accidents arising in connection with the presence of Buyer, its agents and representatives on the Property. Such

policy of insurance shall name Seller as an additional insured with respect to such work on the Property. Upon the commencement of coverage under any insurance policies pursuant to this section, Buyer shall provide Seller with a copy of such insurance policy and evidence that Buyer has paid the cost of the premium for such insurance policy. Buyer shall promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property and fully restore the Property to the condition in which the same was found before any such activities were undertaken.

B. Buyer agrees to indemnify, defend and hold Seller and all of its officers, agents, employees, contractors and representatives, harmless from and against any and all claims, causes of action, damages, liabilities and expenses (including reasonable attorneys' fees) (collectively **"Damages"**) arising out of Buyer's inspections or tests permitted hereunder or any violation of the provisions of this Section 4.5.

C. Buyer's obligations pursuant to this Section 4.5 shall survive any termination or expiration of this Agreement and the Closing.

**4.6. Seller's Right to Terminate.** Notwithstanding anything to the contrary in this Agreement, if at any time prior to Closing either: (i) the Environmental Testing or other environmental due diligence of any kind or nature by either Party, any regulatory action by an environmental regulatory agency with jurisdiction over the Property, or any other event of whatever nature establishes a requirement for the Seller to fund any environmental remediation of the Property; or (ii) the Parties fail, for any reason, to mutually agree upon the terms of the IKC Agreement for the delivery of in-kind consideration from the Buyer to the Seller in a total amount not less than the Purchase Price pursuant to Section 2.2; then the Seller shall have the right, in its sole and absolute discretion, to terminate this Agreement by delivery of written notice to the Buyer. In the event this Agreement is terminated by the Seller pursuant to this Section 4.6, the Buyer shall have no right to pursue any claims or causes of action of any nature against the Seller for damages, liabilities or expenses.

**4.7. Buyer's Right to Terminate.** Notwithstanding anything to the contrary in this Agreement, within the period of two hundred and forty (240) days from the Effective Date of this Agreement, if any results of the Buyer's due diligence work, as set forth under this Article IV, and Section 6.2 herein, cause the Buyer to determine, in its sole and absolute discretion, that the Property is not suitable for Buyer's intended uses then the Buyer shall have the absolute right to terminate this Agreement by delivery of written notice to Seller. In the event this Agreement is terminated by Buyer pursuant to this section 4.7, the Seller shall have no right to pursue any claims or causes of action of any nature against Buyer for damages, liabilities or expenses.

## ARTICLE V.
## CONVEYANCE OF PROPERTY "AS IS"

**5.1. Disclaimer.** The Seller, nor any agents, employees, officers, contractors or representatives of the Seller have made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, statutory, oral or written, past, present or future with respect to the Property, including but not limited to, warranties, representations or guaranties as to any of the

following matters, whether patent or latent:

(i) Matters of title;
(ii) Environmental matters related to the Property or any portion thereof;
(iii) Geological conditions, including, without limitation, subsidence, subsurface conditions, water table, and underground water reservoirs;
(iv) Whether, and to the extent to which, the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood-prone area, flood plain, floodway or special flood hazard;
(v) Soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides;
(vi) The availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric;
(vii) Uses of adjoining property;
(viii) Access to the Property or any portion thereof;
(ix) The condition of use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws;
(x) The existence or non-existence of underground storage tanks;
(xi) Any other matter affecting the stability or integrity of the Property;
(xii) The potential for further development of the Property;
(xiii) The existence of land use, zoning or building entitlements affecting the Property; or
(xiv) The habitability, merchantability, or suitability of the Property or fitness of the Property for any particular purpose.

**5.2. As-Is.** Buyer has not relied upon and will not rely upon, either directly or indirectly, any representation of Seller, or any of the Seller's agents, employees, officers, contractors or representatives and acknowledges that no such representations have been made. Buyer represents that it is a knowledgeable and experienced purchaser of real estate and that it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property. Buyer will conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. At Closing, Buyer shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed by Buyer's inspections and investigations. Buyer acknowledges and agrees that at Closing, Seller shall sell and convey to Buyer, and Buyer shall accept the Property, **AS IS, WHERE IS**, and **WITH ALL FAULTS**. Buyer further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property by Seller, any agent of Seller or any third party, and Buyer hereby waives any and all objections and complaints concerning the physical characteristics and any existing conditions on the Property. The terms and conditions of this Section 5.2 shall expressly survive the Closing and shall not merge with the provisions of any closing documents.

## ARTICLE VI.
## AUTHORIZED USE OF THE PROPERTY

**6.1. Property Use.** The Seller has approved this Agreement in reliance on the Buyer's agreement to use the Property for the purpose of constructing and operating independent-living and assisted living units for veterans and their surviving spouses and for support and ancillary services related thereto. The Parties agree that this restriction on the authorized use of the Property shall be included as a covenant in the Deed by which Seller conveys the Property to Buyer and that this restriction shall run with the Land. The Parties further agree the Deed shall include a covenant establishing a reversionary interest in favor of the Seller should the Buyer fail to deliver to the Seller within Twenty (20) years from the Closing (the "Delivery Date") the following documents, all in a form reasonably satisfactory to the Seller, evidencing the Buyer's ability to commence and successfully complete construction of the Initial Units from its Phase 4 development work as described in Article III above: (i) a written certification by duly a qualified architect and/or duly qualified engineer of the completion of (A) the Phase III site work and construction of infrastructure, and (B) the final approved design plans and specifications for the construction of the Initial Units (the "Final Plans"); (ii) a copy of a fully executed general construction contract for the construction of the Initial Units in accordance with the Final Plans (the "Construction Contract"); (iii) written evidence that the work to be accomplished under the Construction Contract is fully funded; and (iv) copies of payment and performance bonds provided to the Buyer by a qualified surety in the amount of the total cost of constructing the Initial Units as such cost is stipulated in the Construction Contract (the preceding items (i) through (iv) collectively, the "Reverter Requirements"). The Seller agrees that the Buyer may deliver the Reverter Requirements to the Seller at the time it closes its financing for the construction of the Initial Units. Upon the Buyer's full satisfaction of the Reverter Requirements prior to the Delivery Date, the Seller will provide a release of its reversionary interest in the Property in a form suitable for recording in the public records. If the Buyer fails to satisfy the Reverter Requirements by the Delivery Date, title to the Property shall revert to the Seller without compensation of any kind to the Buyer. This Section 6.1 restricting the Buyer's use of the Property, establishing a reversionary interest and providing requirements to remove the reverter shall expressly survive the Closing and shall not merge with the provisions of any closing documents.

**6.2. Future Land Use Amendment and Rezoning.** In order to develop the Property for the authorized uses as set forth in this Article VI ("Authorized Uses") the Buyer will be required to obtain from Okaloosa County, Florida an amendment to the County's Future Land Use Map and a rezoning of the current zoned use category under the County's Land Development Code. Seller agrees to allow Buyer to submit applications to Okaloosa County for a Future Land Use Map Amendment ("FLUA") and a rezoning of the Property to the appropriate Future Land Use and Zoning classifications as determined by the Buyer, in consultation with Okaloosa County planning officials, to allow for the development and operation of the Property for the Authorized Uses. Buyer shall be responsible for all expenses related to the FLUA and rezoning process. Seller agrees to provide reasonable assistance for Buyer's efforts to obtain the FLUA and rezoning and execute such documentation the Seller determines, in its sole discretion, to be appropriate in connection with the FLUA and rezoning. *Provided, further,* that any application for a FLUA and rezoning of the Property shall expressly provide that the requested FLUA and rezoning shall not become effective until the Seller obtains title to the Property at Closing and shall further provide

that in the event this Agreement is terminated by the Seller for any reason the Buyer's applications to Okaloosa County shall automatically terminate. Buyer's obligations pursuant to this Section 6.2 shall survive any termination or expiration of this Agreement and the Closing.

## ARTICLE VII.
## REPRESENTATIONS OF THE PARTIES

**7.1. Seller's Representations.** The Seller hereby represents to Buyer on and as of the Effective Date and will represent as of the date of Closing, that Seller has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the Seller pursuant hereto, and all required action and approvals therefore shall be duly taken and obtained for the Closing.

**7.2. Buyer's Representations.** The Buyer hereby represents to the Seller that on and as of the Effective Date and on and as of the Closing, Buyer has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the Buyer pursuant hereto, and all required action and approvals therefore shall be duly taken and obtained for the Closing. The individuals signing this Agreement and all other documents executed or to the executed pursuant hereto on behalf of Seller shall be duly authority to sign on Buyer's behalf and to bind Buyer thereto.

## ARTICLE VIII.
## CLOSING

**8.1. Closing Date.** Upon the Parties' execution of the IKC Agreement pursuant to Section 2.2, the Parties shall set a date for closing the transaction which date shall be within one hundred eighty (180) days of the Effective Date of the IKC Agreement (the "**Closing Date**"). It shall be a condition of each Party's obligation to close hereunder that the other Party shall have performed its obligations hereunder. Unless otherwise agreed in writing by the Parties, the Closing shall be conducted through escrow by Anchors Smith Grimsley, PLC, 909 Mar Walt Drive, Suite 1014, Fort Walton Beach, Florida 32547.

**8.2. Closing Costs.** The Buyer shall be responsible for the payment of all costs associated with the conveyance and the Closing including, without limitation, survey, title, recording, escrow of documents and all administrative costs. At Closing the Buyer shall reimburse the Seller for any transaction or Closing costs the Seller has incurred and paid to carry out this conveyance, except for the cost of any environmental remediation of the Property as may be approved and paid by the Seller in its sole and absolute discretion (the "**Seller Costs**"). Thirty (30) days prior to Closing, the Seller shall deliver to the Buyer a written notice itemizing any Seller Costs to be reimbursed by Buyer to the Seller at Closing.

**8.3. Deliveries at Closing.**

A. Seller's Deliveries. At Closing, the Seller shall deliver the following:

(i) Possession of the Property;

(ii) An executed and acknowledged Quitclaim Deed conveying the Property, in the form at Exhibit D attached hereto and made a part hereof; and

(iii) Such documents as are reasonably necessary or customary to consummate the transaction in form and substance acceptable to Seller.

B. Buyer's Deliveries. At closing the Buyer shall deliver the following:

(i) The fully executed and funded IKC Agreement, in a form reasonably satisfactory to the Seller;

(ii) Executed and acknowledged signature page for the Deed indicating acceptance (to be attached to the Deed as a counterpart);

(iii) A check to the Seller in the amount of the Seller Costs made payable to the U.S. Treasury in accordance with directions to be provided by the Seller;

(iv) A copy of a fully executed Architecture/Engineering contract for the full scope of Phase 2 development work as described in Article III above for the construction of independent-living and assisted living units for veterans on the Property and proof, in a form reasonably satisfactory to the Seller, of the Buyer's ability to fund the cost of such professional services; and

(v) Such documents as are reasonably necessary or customary to consummate the transaction in form and substance acceptable to Buyer.

## ARTICLE IX.
## DISPUTES AND REMEDIES

### 9.1. Disputes.

A. Parties to Negotiate. If a dispute should arise, the Parties agree to first attempt to resolve the dispute using unassisted negotiation techniques (i.e., without the assistance of a neutral third party). Either Party may request in writing that unassisted negotiations commence. As part of the unassisted negotiation, the Parties shall consider employing joint fact-finding, if material factual disputes are involved, and shall use other early resolution techniques appropriate to the circumstances. If the dispute involves material issues of fact, the Parties may employ a neutral third party to provide a confidential evaluation of the issues of fact.

B. Alternative Dispute Resolution.

(i) If the dispute is not resolved within sixty (60) days after the request for unassisted negotiations, and the Parties do not mutually agree to continue the unassisted negotiations, the Parties shall employ alternative dispute resolution (**ADR**) procedures involving nonbinding mediation of the dispute by a neutral third party. The ADR procedures employed shall include a confidential evaluation of both the facts and the law and the issuance of confidential recommendations by the neutral third party.

(ii) By entering into this Agreement, the Parties have voluntarily adopted ADR procedures in accordance with 5 U.S.C. § 572(c). These procedures shall not be employed if determined by either Party to be inappropriate after taking

into consideration the factors enumerated at 5 U.S.C. § 572(b). A Party rejecting ADR as inappropriate shall document its reasons in writing and deliver them to the other Party. The Parties shall enter into a master written ADR Agreement governing ADR proceedings that may be amended as needed to fit individual proceedings. (A template of an acceptable ADR agreement may be found at www.adr.af.mil).

(iii) The Seller's obligation to make payment arising out of an agreement resolving a dispute under this Agreement is contingent upon the availability of funds proper for such payment.

C. This Agreement is subject to the Contract Disputes Act of 1978, as amended, 41 U.S.C. §§ 7101-7109. If the Parties are unable to resolve the dispute following unassisted negotiations and/or the ADR proceeding, the Seller shall designate a contracting officer who shall issue a final decision under the Contract Disputes Act. Before the contracting officer can issue a final decision on a Buyer claim, the claim must be submitted in writing to the contracting officer at an address provided by the Seller, and must comply with all requirements of 41 U.S.C. § 7103. The contracting officer's final decision may be appealed as provided in 41 U.S.C. § 7104.

**9.2. Remedies.**

A. The Seller and the Buyer may, in their sole and absolute discretion, elect to terminate this Agreement and pursue any remedy available under law or equity after exhaustion of the Disputes process defined in Section 9.1 above.

B. The failure of the Seller or the Buyer to insist in any one or more instances upon complete performance of any term or condition of this Agreement or the Deed shall not be construed as a waiver of, or a relinquishment of the Seller's or Buyer's right to the future performance of any of those terms or conditions and either Party's obligations with respect to such future performance shall continue in full force and effect.

## ARTICLE X.
## NOTICES

**10.1.** Whenever the Seller or Buyer desires to give the other any notice, demand, order, direction, determination, consent or approval, request, or other communication with respect to this Agreement, each such communication shall be in writing and shall not be effective unless given or served by personal delivery to the Party or Parties to whom such communication is directed, or by mailing the same to such Party or Parties by certified United States mail, return receipt requested, or by delivering the same through a nationally recognized and reputable overnight delivery service. Such delivery or mailing shall be to the appropriate delivery or mailing address specified below, or at such other address or addresses as the Seller and Buyer, may from time to time designate by notice given hereunder. Delivery shall be effective on the date of receipt (or refusal of delivery, if applicable) confirmed by the records of the mailing or delivery service.

To Buyer: **Air Force Enlisted Village**
US Postal Mailing Address:

92 Sunset Lane
Shalimar, FL 32579-1000

With a copy to: **C. Jeffrey McInnis, Esq.**
ANCHORS SMITH GRIMSLEY, PLC
US Postal Mailing Address:
909 Mar Walt Drive, Suite 1014
Fort Walton Beach, Florida 32547

To the Seller: **Department of the Air Force**
**Attn: AFCEC/CIT**
US Postal Mailing Address:
2261 Hughes Avenue, Suite 155
Joint Base San Antonio – Lackland, TX 78236

Overnight Delivery Address:
3515 S. General McMullen, Dr., Suite 155
San Antonio, TX 78226

With a copy to: **Department of the Air Force**
**Attn: SAF/GCN c/o AFCEC/CI**
US Postal Mailing Address:
2261 Hughes Avenue, Suite 155
Joint Base San Antonio – Lackland, TX 78236

Overnight Delivery Address:
3515 S. General McMullen Dr., Suite 155
San Antonio, TX 78226-1858

## ARTICLE XI.
## MISCELLANEOUS

**11.1. Entirety and Amendments.** This Agreement, including the exhibits attached hereto, contains the entire agreement of the Parties. There are no other agreements, oral or written relating to the conveyance of the Property, and this Agreement may be amended only by an instrument in writing that is signed by both Parties.

**11.2. Governing Law.** This Agreement shall be construed in accordance with applicable Federal laws and in the case where such Federal law does not exist, in accordance with the applicable laws of the State of Florida. Without limiting the generality of the foregoing, all Disputes shall be subject to the Contracts Disputes Act, as amended, as provided in Article VIII.

**11.3. Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, rules, ordinances and regulations. If any term of this Agreement or the application thereof to any person or any circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or

provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be effected thereby, and each such term or provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**11.4. Assignability.** The Buyer shall not assign any interest in this Agreement without the Seller's prior written consent, to be granted by the Seller in its sole and absolute discretion, *provided, however,* if the Buyer is not then in default in the performance of any term or condition of this Agreement, the Buyer may, subject to the prior written consent of the Seller, which consent shall not be unreasonably withheld or delayed, assign its rights and interest in this Agreement to an affiliated entity upon assumption by such assignee of all of Buyer's obligations hereunder.

**11.5. Interpretation.** This Agreement represents a collaborative and negotiated effort between the Parties together with their legal counsel and, therefore, there shall be no presumption regarding interpretation, and this Agreement shall neither be more strongly interpreted for or against any Party.

**11.6. No Individual Liability of Government Officials.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Seller in his or her individual capacity or otherwise and, absent fraud or illegal or unconstitutional acts, such persons shall not be subject to any personal liability or accountability by reason of the execution of this Agreement, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

**11.7. Force Majeure.** To the extent either Party is delayed in performing any obligation hereunder (excluding payment obligations) by acts of God, weather delays, war, acts of terrorism, labor disputes, strikes, riots, shortages of labor or materials, litigation, governmental laws, regulations or restrictions, acts or omissions of governmental authorities, or any other events or circumstances outside the reasonable control of such Party, the time for such Party's performance of such obligation shall be extended by the number of days of such delay.

**11.8. No Third Party Beneficiary**. Except as otherwise expressly provided herein, this Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity as a third party beneficiary or otherwise.

**11.9. Recording.** Neither this Agreement nor any memorandum or evidence hereof shall be recorded in any public records without the prior written consent of both Parties.

**11.10. Execution in Counterparts.** This Agreement may be executed in multiple counterparts, each of which is to be deemed original for all purposes. A telecopied facsimile or e-mailed facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of the Parties to the terms herein.

**11.11. No Joint Venture.** Nothing contained in this Agreement will make, or will be construed to make, the Parties partners or joint venturers with each other. Neither will anything in this Agreement render, nor be construed to render, either Party hereto liable to

any third party for debts or obligations of the other Party hereto.

**11.12. Non-Merger.** The provisions of Sections 2.2, 4.3., 4.4., 5.2., 6.1. of this Agreement shall survive Closing and shall not be merged into the Deed or any other document at Closing.

**11.13. Exhibits.** The following Exhibits are attached to and made a part of this Agreement:

| | |
|---|---|
| Exhibit A | Description of Land |
| Exhibit B | Depiction of Land |
| Exhibit C | List of Improvements |
| Exhibit D | Form of Deed |

**[SIGNATURE PAGES TO FOLLOW]**

**SELLER SIGNATURE PAGE TO PURCHASE AND SALES AGREEMENT**

IN WITNESS WHEREOF, the United States of America has executed this Purchase and Sales Agreement effective as of 21 OCT 2021.

THE UNITED STATES OF AMERICA,
acting by and through the Secretary of the Air Force

**ROBERT E. MORIARTY, P.E., SES**
Deputy Assistant Secretary of the Air Force
(Installations)

**BUYER SIGNATURE PAGE TO PURCHASE AND SALES AGREEMENT**

AIR FORCE ENLISTED VILLAGE, INC.,
a Florida not for profit corporation

By: _____
Brooke P. McLean, President

**Exhibit A**

**Description of Land**

**(SEE ATTACHED)**

LEGAL DESCRIPTION

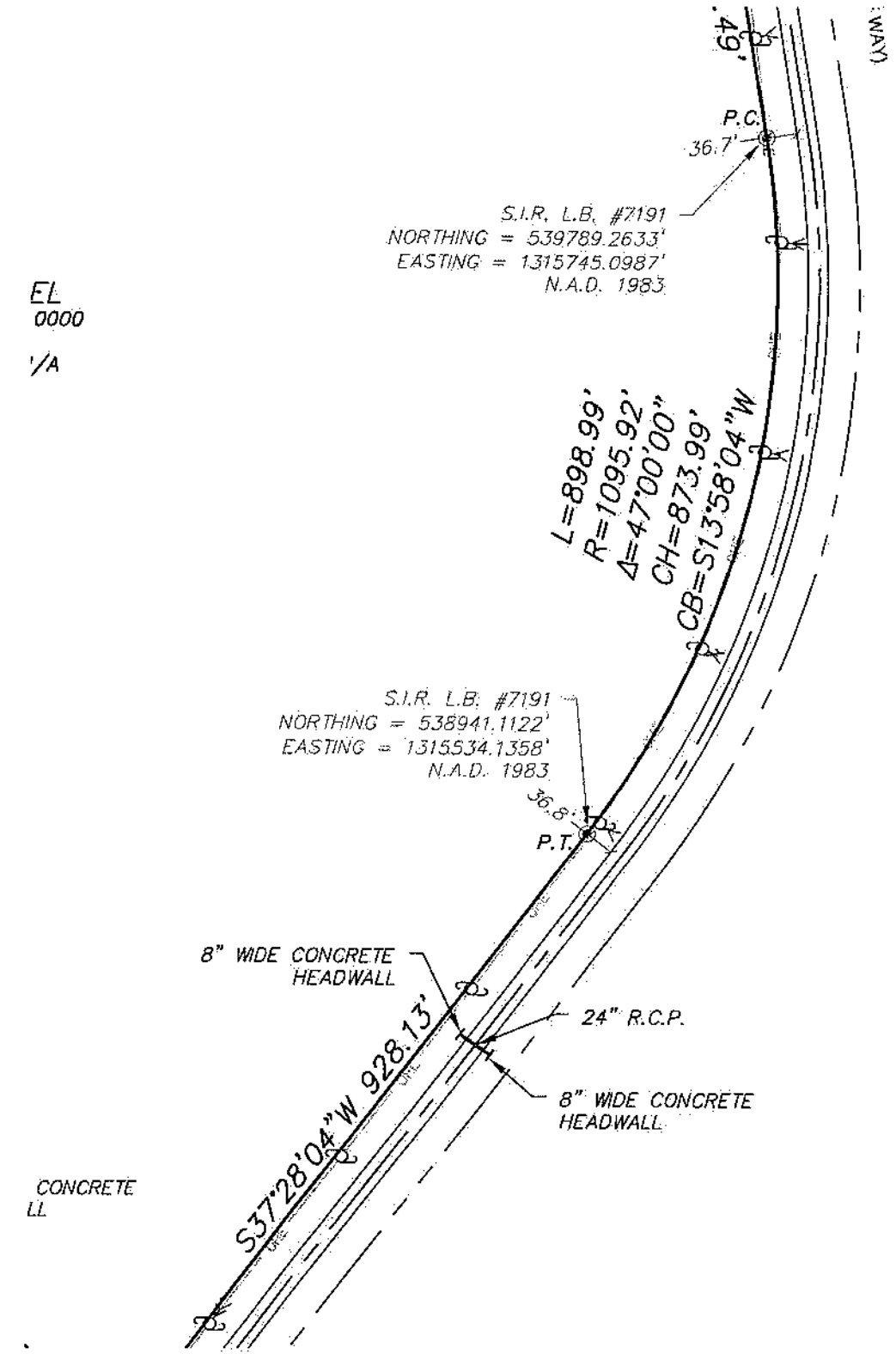
(as surveyed)

Commencing at the Southwest Corner of Section 29, Township 1 South, Range 23 West, Okaloosa County, Florida. Thence run North 02 degrees 06 minutes 53 seconds East along the west line of said Section 29, a distance of 1,519.92 feet to the point of intersection with the northerly right of way line of State Road S-85-B, also known as Sunset Lane, 100.0 foot wide public right of way, and the Point of Beginning. Thence run North 02 degrees 06 minutes 53 seconds East, along the west line of said Section 29, a distance of 857.37 feet. Thence departing the west line of said Section 29, run South 87 degrees 16 minutes 27 seconds East, a distance of 2,120.23 feet to a point on the westerly right of way line of Poquito Road, 100.0 foot wide public right of way. Thence run South 09 degrees 31 minutes 56 seconds East along said westerly right of way line, a distance of 583.49 to a point of curvature. Thence go along said curved westerly right of way line to the right having a radius of 1,095.92 feet, an arc distance of 898.99 feet (delta = 47 degrees 00 minutes 00 seconds, chord = 873.99 feet, chord bearing = South 13 degrees 58 minutes 04 seconds West) to a point of tangency. Thence run South 37 degrees 28 minutes 04 seconds West along said westerly right of way line, a distance of 928.13 feet to a point of intersection with the northerly right of way line of said State Road S-85-B, also known as Sunset Lane. Thence departing the westerly right of way line of said Poquito Road run North 46 degrees 12 minutes 26 seconds West along the northerly right of way of said State Road S-85-B, also known as Sunset Lane, a distance of 1,961.06 feet to a point of curvature. Thence go along said curved northerly right of way line to the left having a radius of 653.80 feet, an arc distance of 72.43 feet (delta = 06 degrees 20 minutes 49 seconds, chord = 72.39 feet, chord bearing = North 49 degrees 22 minutes 50 seconds West) to the Point of Beginning. The above described parcel contains 80.00 acres, more of less.

**Exhibit B**

**Depiction of Land**

**(SEE ATTACHED)**




| | | |
|---|---|---|
| L.B. | = | LICENSED SURVE |
| L | = | ARC LENGTH |
| LLC | = | LIMITED LIABILITY |
| N/A | = | NOT AVAILABLE |
| N.A.D. | = | NORTH AMERICAN |
| O.R. | = | OFFICIAL RECORD |
| P.C. | = | POINT OF CURVA |
| P.O.T. | = | POINT ON TANGE |
| P.T. | = | POINT OF TANGE |
| P.S.M. | = | PROFESSIONAL S |
| PG. | = | PAGE |
| R/W | = | RIGHT OF WAY |
| R.C.P. | = | REINFORCED CON |
| R23W | = | RANGE 23 WEST |
| R | = | RADIUS |
| S.F. | = | SQUARE FEET |
| S.I.R. | = | SET CAPPED IRO |
| S.N.&D. | = | SET NAIL AND D |
| SEAS | = | SEASIDE ENGINEE |
| T1S | = | TOWNSHIP 1 SOU |
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| & | = | AND |
| Δ | = | CENTRAL ANGLE |
| ± | = | MORE OR LESS |
| # | = | NUMBER |

## Survey Not

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   FLORIDA.
4. UNDERGROUNC

# Exhibit C

## List of Improvements

**NONE**

**Exhibit D**

**Form of Quitclaim Deed**

**(SEE ATTACHED)**

**Okaloosa County, Florida**
**Recording Fee:**
**Documentary Tax:**

**RECORDING REQUESTED BY**
**AND WHEN RECORDED MAIL TO:**

**C. Jeffrey McInnis, Esq.**
**ANCHORS SMITH GRIMSLEY, PLC**
**909 Mar Walt Drive, Suite 1014**
**Fort Walton Beach, FL 32547**
**(850) 863-4064**
**jmcinnis@asglegal.com**

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**Space above reserved for Recorder's use only**

**STATE OF FLORIDA** §
§ **QUITCLAIM DEED**
**COUNTY OF OKALOOSA** §

## I. PARTIES

**THIS DEED** is made this ____ day of _____, _____, (the "**Effective Date**") by **THE UNITED STATES OF AMERICA**, acting by and through the Secretary of the Air Force, under and pursuant to the powers and authority contained in Public Law 115-232 (132 STAT. 1637) and delegations and regulations promulgated thereunder, (the "**Grantor**"), and the **AIR FORCE ENLISTED VILLAGE, INC.**, a Florida non-profit corporation (the "**Grantee**").

## II. CONSIDERATION AND CONVEYANCE

**KNOW ALL MEN BY THESE PRESENTS**, that the Grantor for and in consideration of the sum of FIVE MILLION and NO/100 ($5,000,000) DOLLARS and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, hereby **QUITCLAIMS, RELEASES, GRANTS, CONVEYS,** and **TRANSFERS** to **GRANTEE** all of right, title and interest of the United States of America in and to that certain parcel of real property containing approximately 80 acres and ancillary improvements, if any, thereon (the "**Property**") located in Okaloosa County, Florida, as more particularly described in Exhibit A attached hereto and made a part hereof for all purposes, but reserving unto the Grantor its successors and assigns the reverter and easements set forth more fully below and further this Deed is subject to the reservations, rights, terms and conditions more fully set forth in this Deed.

## III. APPURTENANCES AND HABENDUM

**TOGETHER WITH** all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, thereto.

## IV. RESERVATIONS

**RESERVING UNTO THE GRANTOR**, pursuant to Section 120(h)(4)(D)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**") of 1980 (42 U.S.C. § 9620(h)(4)(D)(i)), a perpetual and assignable easement and right of access on, over, under, across, and through the Property, to enter upon the Property for the purposes of environmental investigation and for remediation or other corrective action in any case in which a remedial action or corrective action is found to be necessary on the part of the Grantor, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, testpitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the Grantor to meet its responsibilities under applicable laws and as provided for in this Deed. Such easement and right of access shall be binding on the Grantee and its successors and assigns and shall run with the land. In exercising such easement and right of access, the Grantor shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The Grantor shall use reasonable means to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property but Grantee agrees that, notwithstanding any other provisions of this Deed, the Grantor assumes no liability to the Grantee, its successors or assigns, should the exercise of the Grantor's rights under this reserved easement interfere with the use of the Property. At the completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the Grantor. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee, nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the Grantor. In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the Grantor or any officer or employee of the Grantor based on actions taken by the Grantor or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by the Grantee and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.

## V. CONDITIONS

**A.** The Grantee agrees to accept conveyance of the Property subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances affecting the Property, whether of record in the Office of the County Clerk of Okaloosa County, Florida, or otherwise.

**B.** The Grantee acknowledges that it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed, "**AS IS**," and "**WHERE IS**," without any representation, promise, agreement, or warranty on the part of the

Grantor regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs, or additions or that the same is in a condition of fit to be used for the purpose for which intended and without warranties, express or implied under the Uniform Commercial Code of the State of Florida. The Grantee further acknowledges that the Grantor shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law.

## VI. RESTRICTIVE COVENANT AND GRANTOR'S REVERSIONARY INTEREST

**A. Restrictive Covenant on Permitted Use of the Property.** The Grantee covenants and agrees, for itself and its successors and assigns, that it shall not use the Property for any purpose other than for constructing and operating independent-living and assisted living units for veterans and their surviving spouses and for support and ancillary services related thereto (the "**Permitted Use**"). This restrictive covenant shall inure to the benefit of the Grantor; shall be binding upon the Grantee, its successors and assigns; shall be deemed to touch and concern the land; and shall run with the land.

**B. Grantor Reversionary Interest.** The Grantee must deliver to the Grantor the following documents, all in a form reasonably satisfactory to the Grantor, evidencing the Grantee's ability to commence and successfully complete construction of a minimum of twenty (20) initial independent and/or assisted-living units and associated structures (the "**Initial Units**") : (i) a written certification by a duly qualified architect and/or duly qualified engineer of the completion of (A) the initial construction including site work and infrastructure construction sufficient to support a minimum of forty (40) independent and/or assisted-living units, and (B) the final approved design plans and specifications for the construction of the Initial Units (the "**Final Plans**"); (ii) a copy of a fully executed general construction contract for the construction of the Initial Units in accordance with the Final Plans (the "**Construction Contract**"); (iii) written evidence that the work to be accomplished under the Construction Contract is fully funded; and (iv) copies of payment and performance bonds provided to the Grantee by a qualified surety in the amount of the total cost of constructing the Initial Units as such cost is stipulated in the Construction Contract (the preceding items (i) through (iv) collectively, the "**Reverter Requirements**"). If the Grantee fails to deliver all of the Reverter Requirements to the Grantor before the end of Twenty (20) years after the Effective Date of this Deed, then all right, title and interest in and to the Property shall, upon the recording by the Grantor of a Notice of Reversion of Title, revert to, be revested in, and automatically become the property of the Grantor, and the Grantee, its successors and assigns, shall forfeit all right, title, and interest in and to the Property and in and to any and all of the tenements, hereditaments, and appurtenances thereto without compensation of any kind to the Grantee. The failure of Grantor to insist upon the complete performance of the conditions, terms, or covenants of this Deed shall not be construed as a waiver of, or a relinquishment of Grantor's rights under this Deed. *Provided, further,* that if the Grantee fully satisfies its obligation to deliver the Reverter Requirements, the Grantor will provide Grantee

with a release of its reversionary interest in the Property in a form suitable for the Grantee to record in the public records.

## VII. GRANTOR CERCLA COVENANT

**A.** Installation Restoration Program sites are not located on the Property and no hazardous substances or petroleum products were known to have been released, treated, or dispose on the Property, and no migration of these substances from adjacent areas onto the Property has taken place.

**B.** Pursuant to section 120(h)(4)(D)(i) of CERCLA, the United States covenants and warrants that any response action or corrective action necessary after the date of this Deed for contamination existing on the Property prior to the Effective Date of this Deed will be conducted by the United States.

**C.** For the purposes of the foregoing warranty, the phrase "any response action or corrective action necessary" does not include any requirement for the Grantor to perform additional remedial action that may be necessary to facilitate any change in use of the Property by the Grantee after the date of Grantee acceptance of this Deed. The foregoing warranty will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible party as a result of an act or omission affecting the Property either before or after the date on which any grantee acquired an interest in the Property.

**D.** The Grantor has reserved access to the Property in Section IV, Reservations, of this Deed in order to perform any remedial or corrective action as required by CERCLA Section 120(h)(4)(D)(i).

## VIII. OTHER COVENANTS AND NOTICES

**A.** Pesticides. Registered pesticides may have been applied to the Property and may continue to be present thereon. Where a pesticide was applied by the Grantor or at the Grantor's direction, to the best of the Grantor's knowledge, the pesticide was applied in accordance with its intended purpose and consistent with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA – 7 U.S.C. §136, *et. seq.*) and other applicable laws (a "**Properly Applied Pesticide**"). If the acts or omissions of the Grantee cause a release of a Properly Applied Pesticide, the Grantee assumes all resulting responsibility and liability therefor as may be required under applicable law.

**B.** Non-Discrimination. The Grantee covenants and agrees not to discriminate upon the basis of race, color, religion, national origin, sex, age, or handicap in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it apply with respect to religion if the Property is on premises used primarily for religious purposes. The United States shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property.

C. Hazards to Navigation. The Grantee covenants for itself, its successors and assigns, that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with 14 C.F.R. Part 77, entitled "Safe, Efficient Use, and Preservation of the Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

## IX. MISCELLANEOUS

Each covenant of this Deed shall be deemed to touch and concerns the land and shall run with the land.

## X. LIST OF EXHIBITS

The following **Exhibit** is attached to and made a part of this Deed:
**Exhibit A** – Legal Description of the Property

[Remainder of Page Intentionally Left Blank. Signature Pages Follow]

**IN WITNESS WHEREOF**, the Grantor has executed this Quitclaim Deed as of the ___ day _____, 2021 to be effective as of the Effective Date.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

**UNITED STATES OF AMERICA, acting by and through the Secretary of the Air Force**

Witness
Print Name: _____

By: _____
Name: _____
Title: _____

Witness
Print Name: _____

COMMONWEALTH OF VIRGINIA )
) ss:
COUNTY OF ARLINGTON )

This instrument was acknowledged before me this ___ day of _____, 2021, by ROBERT E. MORIARTY, Deputy Assistant Secretary of the Air Force (Installations) on behalf of the Secretary of the Air Force.

_____
Notary Public, Commonwealth of Virginia

Name: _____

My Commission Expires:

## ACCEPTANCE BY GRANTEE

Grantee does hereby accept the herein described Property, subject to the reservations, restrictions, reversionary interests, conditions and exceptions hereinabove expressed, as of the Effective Date.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

WITNESSES:

**AIR FORCE ENLISTED VILLAGE, INC.,**
a Florida not for profit corporation

_____

Print Name:_____

By:_____
Brooke P. McLean, President

_____

Print Name:_____

STATE OF FLORIDA )

COUNTY OF OKALOOSA )

The foregoing instrument was acknowledged before me by means of physical presence this ____ day of _____ 202___, by Brooke P. McLean, in his capacity as President of the Air Force Enlisted Village, Inc., a Florida not for profit corporation, on behalf of the corporation, who is personally known to me and therefore did not provide identification and who did not take an oath.

_____[SEAL]
NOTARY PUBLIC

**EXHIBIT A**
**Legal Description**

Commencing at the Southwest Corner of Section 29, Township 1 South, Range 23 West, Okaloosa County, Florida. Thence run North 02 degrees 06 minutes 53 seconds East along the west line of said Section 29, a distance of 1,519.92 feet to the point of intersection with the northerly right of way line of State Road S-85-B, also known as Sunset Lane, 100.0 foot wide public right of way, and the Point of Beginning. Thence run North 02 degrees 06 minutes 53 seconds East, along the west line of said Section 29, a distance of 857.37 feet. Thence departing the west line of said Section 29, run South 87 degrees 16 minutes 27 seconds East, a distance of 2,120.23 feet to a point on the westerly right of way line of Poquito Road, 100.0 foot wide public right of way. Thence run South 09 degrees 31 minutes 56 seconds East along said westerly right of way line, a distance of 583.49 to a point of curvature. Thence go along said curved westerly right of way line to the right having a radius of 1,095.92 feet, an arc distance of 898.99 feet (delta = 47 degrees 00 minutes 00 seconds, chord = 873.99 feet, chord bearing = South 13 degrees 58 minutes 04 seconds West) to a point of tangency. Thence run South 37 degrees 28 minutes 04 seconds West along said westerly right of way line, a distance of 928.13 feet to a point of intersection with the northerly right of way line of said State Road S-85-B, also known as Sunset Lane. Thence departing the westerly right of way line of said Poquito Road run North 46 degrees 12 minutes 26 seconds West along the northerly right of way of said State Road S-85-B, also known as Sunset Lane, a distance of 1,961.06 feet to a point of curvature. Thence go along said curved northerly right of way line to the left having a radius of 653.80 feet, an arc distance of 72.43 feet (delta = 06 degrees 20 minutes 49 seconds, chord = 72.39 feet, chord bearing = North 49 degrees 22 minutes 50 seconds West) to the Point of Beginning. The above described parcel contains 80.00 acres, more or less.